

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/214: Regional Certifying Bodies) Instrument 2019

(Subregulation 2.72C(20))

1. The instrument, LIN 19/214, is made under subregulation 2.72C(20) of the *Migration Regulations 1994* (the Regulations).
2. The operation of the instrument is to specify to the Minister's satisfaction, for the purposes of paragraph 2.72C(19)(a) of the Regulations, the bodies are located in, and have responsibility for, the part of a designated regional area in Australia where a nominated position is located. A specified body may be referred to as a Regional Certifying Body.
3. The purpose of the instrument is to implement changes to the skilled regional migration program as a result of amendments to the Regulations by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*. The instrument specifies bodies as Regional Certifying Bodies, who can give advice to the Minister about the matters set out in subregulation 2.72C(18) of the Regulations, in relation to applications for approval of a nomination for a subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.
4. The instrument is part of a package introducing new regional visas designed to deliver a migration program that can respond more effectively to the needs of regional Australia. These changes will also assist with governmental priorities to attract highly skilled migrants to regional areas and ease population pressure in major cities.
5. Section 17 of the *Legislation Act 2003* requires consultations, which are appropriate and reasonably practicable to be undertaken. The following Commonwealth government agencies were consulted in relation to the instrument: the Department of Prime Minister and Cabinet; the Department of Foreign Affairs and Trade, the Attorney-General's Department; the Department of the Treasury; the Department of Finance; the Department of Social Services; the Department of Education (previously the Department of Education and Training); the Department of Employment, Skills,

Small and Family Business (previously the Department of Jobs and Small Business); the Department of Industry, Innovation and Science; the Department of Infrastructure, Transport, Cities and Regional Development (previously the Department of Infrastructure, Regional Development and Cities); the Department of Health; and the Department of Human Services.

6. Pursuant to the frequency and volume of the legislative amendments that are required to maintain a dynamic and responsive immigration system, it has been a consistent practice to include certain criteria and conditions in delegated legislation. The criteria for the new Subclass 491 and Subclass 494 visas have been included in delegated legislation rather than primary legislation to give the Government oversight and the ability to respond in a timely and transparent manner to emerging situations, which may include changes in the labour market and the economy. In addition, instruments made under delegated legislation are subject to the scrutiny framework in the *Legislation Act 2003*, and oversight of the amendments is available to the Parliament under the same legislation.
7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
8. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A**.
9. The whole of this instrument commences at the same time as Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The new Skilled Employer Sponsored Regional (Provisional) (Subclass 494) visa was inserted into the *Migration Regulations 1994* (Migration Regulations) by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* with effect from 16 November 2019. This visa allows skilled foreign workers, who are nominated by a sponsoring employer, to live and work in regional Australia.

Under regulation 2.72C(18) of the Migration Regulations, for a nomination application for a Subclass 494 visa in the Employer Sponsored stream to be approved, the Minister must be satisfied that the Minister has been advised by a body specified by instrument that the nominated applicant for a Subclass 494 visa would be paid at least the annual market salary rate for the occupation. The annual market salary rate, which is also a requirement in the Migration Regulations, helps ensure that a visa applicant receives remuneration and employment conditions that are at least equivalent to what is, or would be, provided to an Australian worker performing the same work at the same location.

This legislative instrument specifies bodies as Regional Certifying Bodies (RCB) to provide this advice regarding nomination applications by approved sponsor employers who are sponsoring foreign workers for the new Subclass 494 visa.

Human rights implications

This instrument has been assessed against the seven core treaties to which Australia is a party.

Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

In supporting visa requirements relating to the remuneration that a foreign worker is to receive when seeking to migrate to Australia on a Subclass 494 visa, this instrument engages the above right.

A number of the features of the new Subclass 494 visa ensure that holders of this visa enjoy fair conditions of work and are protected from exploitation by their sponsoring employer. These include the sponsorship obligations framework (under Division 3A of Part 2 of the *Migration Act 1958* and Part 2A of the Migration Regulations), and the annual market salary rate, which helps ensure that a visa applicant receives remuneration and employment conditions that are at least equivalent to what is, or would be, provided to an Australian worker performing the same work at the same location. The Regional Certifying Bodies specified in the instrument conduct an independent assessment in determining their advice on the annual market salary rate for the occupation, drawing on their specialised knowledge in regard to relevant regional labour market conditions by virtue of their location, local knowledge, and experience.

This instrument therefore assists in ensuring that a skilled foreign worker will be paid at least the annual market salary rate for their position in accordance with local conditions, which is consistent with the right in Article 7(a) of the ICESCR.

Conclusion

The legislative instrument is compatible with human rights because it supports the right to fair conditions of work.

David Coleman

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs